

VZCZCXRO1825
PP RUEHCN RUEHGH RUEHVC
DE RUEHHK #2244/01 2400952
ZNY CCCCC ZZH
P 280952Z AUG 07
FM AMCONSUL HONG KONG
TO RUEHC/SECSTATE WASHDC PRIORITY 2742
INFO RUEHOO/CHINA POSTS COLLECTIVE PRIORITY
RHEHNSC/NSC WASHDC PRIORITY
RUEAWJA/DEPT OF JUSTICE WASHINGTON DC PRIORITY

C O N F I D E N T I A L SECTION 01 OF 02 HONG KONG 002244

SIPDIS

SIPDIS
NOFORN

DEPARTMENT FOR EAP, EAP/CM
NSC FOR DENNIS WILDER
USDOJ FOR CHRISTOPHER LEHMAN, OFFICE OF PROSECUTORIAL
DEVELOPMENT, TRAINING AND ASSISTANCE, AND KYLE LATIMER, OIA

E.O. 12958: DECL: 08/28/2032
TAGS: [PGOV](#) [PREL](#) [PHUM](#) [PINR](#) [SOCI](#) [CH](#) [HK](#) [KJUS](#)
SUBJECT: RULE OF LAW IN HONG KONG

REF: A. SECSTATE 110828
1B. GUANGZHOU 0789
1C. GUANGZHOU 0806
1D. BEIJING 01103

Classified By: Acting E/P Chief Craig Reilly; Reasons 1.4 (b, d)

11. (C) Summary: Since its 1997 reversion to the PRC, Hong Kong has retained its common law system and strong rule of law under the "one country two systems" principle enshrined in the Basic Law. All ordinances, rules of equity, subordinate legislation, and customary law previously enforced by the British have been maintained. With a few exceptions specified in the Basic Law in the areas of defense and foreign relations, the policies and national laws of the mainland are not applicable in Hong Kong. Hong Kong courts exercise independent judicial power and are not subject to a superior court in the Mainland. Since 1997, the PRC National People's Congress Standing Committee (NPCSC) has interpreted the Basic Law on three occasions, each of which triggered strong objections from the Hong Kong legal community, press, and pro-democracy groups. Some legal contacts believe Hong Kong now faces a "lawyer deficit," in part because more foreign companies want Hong Kong legal counsel for their mainland business. Hong Kong court cases are conducted in English, Cantonese, and/or Mandarin, although English predominates in the higher courts. (Note: This cable was prepared by the visiting Embassy Beijing Resident Legal Advisor, with assistance from Hong Kong E/P Section officers and intern. A second cable will discuss Hong Kong's efforts to assist and promote legal reform with mainland China.) End Summary.

One Country, Two Systems

12. (U) At the heart of the Hong Kong legal system is the principle of "one country, two systems." It was enshrined in the Basic Law to guarantee the continuing application of Hong Kong's common law system and rule of law after reversion to the PRC in 1997. All ordinances, rules of equity, subordinate legislation, and customary law previously enforced by the British during Hong Kong's colonial era were to be maintained. According to the Hong Kong Department of Justice, the definition of "rule of law" is that "the power of the Government and all of its servants shall be derived from law as expressed in legislation and the judicial decisions made by independent courts." Equality before the law and the idea all citizens are subordinate to an unbiased, independent judiciary is a fundamental component of the "two systems" principle in Hong Kong.

13. (U) Under the Basic Law, the policies and national laws of the mainland socialist system are not applicable in Hong Kong, except for those relating to defense and foreign affairs that are listed in Annex III of the Basic Law. Correspondingly, the laws applicable in Hong Kong, except for the Basic Law and the national laws listed in Annex III, are not applicable in the mainland. Under the Basic Law, the central government may extend to the Hong Kong Special Administrative Region (HKSAR) international agreements to which the PRC is a party, after consulting with the Hong Kong Government (HKG). The HKG also can implement international agreements to which China is not a party with the authorization of the central government.

14. (U) Hong Kong courts exercise independent judicial power and are not subject to a superior court in the Mainland. Laws enacted by the Hong Kong Legislative Council (Legco) are reported to the NPCSC for the record, a process which does not affect the enforcement of those laws. In addition, Article 84 of the Basic Law also provides that the courts of

the HKSAR may refer to the precedents of other common law jurisdictions.

Judicial Autonomy

15. (U) Since 1997, the HKG has requested the NPCSC to interpret the Basic Law on two occasions: first, in 1999 concerning a decision by the Hong Kong Court of Final Appeal (CFA) involving the right to abode of children born in mainland China of Hong Kong permanent resident parents; and second, in 2005 to determine the length of term of the new Chief Executive after his predecessor resigned before the end

HONG KONG 00002244 002 OF 002

of his elected term. In one other case concerning possible implementation of universal suffrage for the 2007 Chief Executive and 2008 Legco elections, the NPCSC in 2004 interpreted the Basic Law on its own initiative.

16. (C) All three NPCSC interventions triggered strong objections from the Hong Kong legal community, the independent press, and pro-democracy groups. CFA Justice Kemal Bokhary told us recently that he and the other four CFA justices seriously considered resignation after the 1999 interpretation, when the NPCSC effectively overruled the CFA's determination, but they decided not to do so because "you can only do that once." Also, the justices feared they would be replaced by less independent or competent jurists. Justice Bokhary believes that under current Secretary for Justice Wong Yan-lung the HKG is not likely to submit another CFA case to the NPCSC for interpretation.

17. (C) Virtually all our contacts agreed that the rule of law will continue to thrive in Hong Kong. Hong Kong University Law School Dean Johannes Chan said the CFA had "regained its vigor" as the guardian of fundamental rights. He believed the court's current members are well-balanced between liberal and conservative, with Chief Justice Andrew Li often the swing vote. Former Secretary for Justice and now Vice Chairman of the Hong Kong-PRC Basic Law Committee Elsie Leung stated the rule of law system will continue to develop under the system of judicial review mandated by the Basic Law. Justice Bokhary believes that the necessary elements of the legal system -- academia, the bar, and the judiciary, along with legal advisors to the government - are in place for rule of law to survive, although he had some concern about the quality of prosecutors.

Profile of the Legal Profession

18. (U) The legal profession in Hong Kong is divided into two distinct branches, barristers and solicitors. Barristers have unlimited rights of audience in all courts and specialize in litigation and giving oral submissions in court hearings on behalf of their clients. Solicitors act as legal advisors to their clients but have limited rights of audience before the court and can only represent clients in lower-level court hearings. If cases are heard at the High Court or the Court of Final Appeals, solicitors obtain information from clients to prepare instructions for barristers, who then represent the client at the upper-level courts. The Bar Council of the Hong Kong Bar Association and the Law Society of Hong Kong are the governing bodies for barristers and solicitors, respectively.

19. (C) There are currently 705 law firms in Hong Kong, including 53 foreign firms that employ 322 foreign lawyers; another 518 foreign lawyers work in local law firms. Hong Kong has three law schools: University of Hong Kong, Chinese University of Hong Kong, and City University of Hong Kong. Most law graduates become corporate lawyers, with relatively few interested in development and improvement of the law. Justice Bokhary believes there is a "lawyer deficit" in Hong Kong, especially in the number of qualified prosecutors. President Lester Huang of the Law Society of Hong Kong agreed, explained that Hong Kong legal resources are spread thin because more foreign companies wanting to do business in China are only willing to use Hong Kong attorneys.

Trilingual Courts

10. (U) Although both English and Chinese are official languages in Hong Kong, the language used in court differs by the level of the court. In criminal matters in magistrates court, Cantonese is the primary language, although English and/or Mandarin can be used. In higher-level courts, where many expatriate judges continue to serve, English is the dominant language. Law Society President Huang suggested that the increasing use of Cantonese may eventually create a conflict in the common law system, which heavily depends on English-language precedents from other common-law countries. On the other hand, many local lawyers speak both languages and Chinese-language pleadings often contain English-language passages from supporting cases.

Cunningham